

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. CR 18-00615 WHA

Plaintiff,

v.

**ORDER DENYING MOTION  
TO SUPPRESS**

TIMOTHY MELCHIOR,

Defendant.

**INTRODUCTION**

In this prosecution for possession with intent to distribute methamphetamine, defendant moves to suppress the search warrant used to search his home, vehicle, person, and any fruits of the search. For the reasons stated below, defendant's motion is **DENIED**.

**STATEMENT**

Following two evidentiary hearings, this order finds the following. On September 27, 2018, detectives Scott Jensen and Luis Oliva, both members of the Marin County Major Crimes Task Force, picked up a confidential informant from the Marin County Jail to conduct a controlled buy as part of an operation targeting drug dealer, Johnny Henderson. The detectives conducted a search of the CI in the jail's parking lot. The detectives subsequently transported her to a staging area where they briefed her on what was to occur and outfitted her with a wireless transmitter.

1 Subsequently, Detective Oliva, operating undercover, drove the CI to Henderson's  
2 residence. The CI entered the residence while Detective Oliva waited in the car. The precise  
3 interaction between the CI and Henderson remains unclear. The CI then returned to the car and  
4 told Detective Oliva that Henderson did not have the drugs, but that his supplier would arrive in  
5 45 minutes with some. The CI then briefly returned to the residence to notify Henderson that  
6 she would return in 45 minutes.

7 Following this interaction, Detective Oliva drove back to the staging area with the CI.  
8 There, Detective Jensen conducted another search of the CI. The CI then waited with detectives  
9 Oliva and Jensen for approximately 45 minutes at the staging area. During this time the  
10 detectives learned that a vehicle (ultimately found to belong to defendant Timothy Melchior)  
11 had arrived at Henderson's residence. Detective Oliva then drove the CI back to Henderson's  
12 home. At this point, defendant and his car had already left. The CI entered Henderson's home  
13 to allegedly purchase the drugs. Detective Oliva then drove the CI back to the staging area.  
14 Detective Jensen searched the CI again. The CI handed Detective Jensen the narcotics that she  
15 stated she had just purchased from Henderson using the buy funds.

16 During the controlled buy operation Detective Paul Shaw (and others) conducted  
17 surveillance on Henderson's residence. They observed defendant's vehicle arrive at  
18 Henderson's home after Detective Oliva and the CI left for the staging area to wait for 45  
19 minutes. Subsequent investigation identified the man who exited the vehicle as defendant and  
20 determined the vehicle was registered to the defendant as well. Detective Jensen submitted the  
21 underlying search warrant in October 2018, which once executed, resulted in evidence leading  
22 to defendant's indictment.

23 In January 2019, the government filed an indictment charging defendant with 21 U.S.C.  
24 Section 841(a)(1) and (b)(1)(A)(viii) – Possession with Intent to Distribute Methamphetamine.  
25 In May 2019, defendant filed a motion seeking to suppress evidence found and seized during  
26 the execution of a search warrant on his home of over 200 grams of methamphetamine, drug  
27 packaging materials, heroin, marijuana, and over \$12,000 in cash. In July 2019, an evidentiary  
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1 hearing occurred in which Detective Jensen testified. In August 2019, a further evidentiary  
2 hearing occurred in which Detectives Oliva and Shaw testified (Dkt. Nos. 1, 28, 49, 55).

### 3 ANALYSIS

4 Motions to suppress are reviewed *de novo*, with significant deference afforded to the  
5 magistrate judge's finding of probable cause. Specifically, the court need only find "under the  
6 totality of the circumstances, the magistrate had a substantial basis for concluding that probable  
7 cause existed" for a search warrant to be valid. *United States v. McQuisten*, 795 F.2d 858, 861  
8 (9th Cir.1986). To suppress evidence seized pursuant to a search warrant under *Franks v.*  
9 *Delaware*, defendant has the burden to show that the affiant of a search warrant knowingly,  
10 intentionally, or recklessly made a false statement or omission. 438 U.S. at 155-56 (1978). The  
11 false information or omission must also be material and necessary to the finding of probable  
12 cause. *United States v. Kiser*, 716 F.2d 1268, 1271 (9th Cir. 1983).

#### 13 1. DEFENDANT'S CRIMINAL HISTORY.

14 Defendant claims the search warrant affidavit included a material misstatement,  
15 specifically that his criminal history "included multiple arrests for possession of narcotics for  
16 sale, burglary, stealing a vehicle, possession of narcotics, Fish and Game violations, identity  
17 theft, possession of stolen property, false identification to a police officer, and evading police  
18 without due regard for safety" (Dkt. No. 28-1 at TM-000044). There is no dispute, however,  
19 that defendant had been arrested for all of the listed offenses. Rather, defendant contends the  
20 statement was misleading because he had been arrested only once for possession of narcotics.  
21 The statement was not misleading. The most reasonable reading of the statement was that the  
22 multiple arrests referred to the entire list of crimes, not just the possession of narcotics.

#### 23 2. THE CONTROLLED BUY.

24 Defendant takes issues with two aspects of the affidavit related to the controlled buy.  
25 *First*, he alleges the affidavit omitted one of the CI's entries and exits into Henderson's  
26 residence. *Second*, he alleges the affidavit omitted whether the CI had been searched more than  
27 once.  
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1           *First*, the affidavit did not omit any of the CI's entries and exists. The affidavit stated,  
2 in relevant part the following:

3           The CI got out of the vehicle and met with Henderson in the  
4 driveway.

5           [. . .]

6           The CI and Henderson spoke for a few seconds and then went  
7 into the house.

8           [. . .]

9           The CI returned to Detective Oliva's vehicle and stated that  
10 Henderson did not have any methamphetamine and was  
11 expecting his dealer to arrive in about 45 minutes. The CI  
12 told Henderson that they would return in about 45 minutes.

13           [. . .]

14           At approximately 2:55 p.m., Detective Oliva drove the CI  
15 back to Henderson's residence. The CI got out of the vehicle  
16 and went into 26 Yosemite Road and met with Henderson.

17           [. . .]

18           The CI spoke with Henderson for a few moments then the CI  
19 left the residence.

20 (Dkt. No. 28-1 at TM-000049–50). These statements captured all three entrances and exits in  
21 Henderson's residence.

22           *Second*, as to the searches, the affidavit only referenced two instances in which  
23 detectives searched the CI. Specifically, Detective Jensen averred that he searched the CI after  
24 picking her up from jail. He also stated he searched her once they had left the area following  
25 the drug purchase. During the evidentiary hearing, however, Detective Jensen also stated he  
26 had searched the CI after the CI and Detective Oliva returned from Henderson's residence to the  
27 staging area the first time. The affidavit did not mention this search. There is, however, no  
28 indication that Detective Jensen omitted this search knowingly, intentionally, or recklessly.

          Defendant next argues that due to these omissions, the search warrant lacked probable  
cause, evidently because the transcript of the audio did not contain any conversation of the drug  
buy (during the CI's final entry into the residence) and because Henderson told the CI he  
needed her money to buy drugs from the supplier. From this, defendant posits the CI possessed

1 the drugs before defendant arrived at the home. The record does not support these far-reaching  
2 speculations and this order finds them untrue. The audio is inaudible in my places, so the lack  
3 of audio regarding the CI's final entry hardly means the transaction did not occur. Furthermore,  
4 the audio transcript indicated Henderson only stated, "[i]f he [the supplier] comes and I don't  
5 got it [inaudible]" (Dkt. No. 28-2 at TM-00178). There is no indication Henderson actually  
6 could not have obtained any drugs without the CI's money. The most plausible reading is that  
7 Henderson wanted her money to buy even larger quantities or simply wanted her money up  
8 front, not that he was broke and had to have her money to buy any drugs at all. And, it was also  
9 plausible that Henderson bought credit.

10 Most importantly, the main question is whether the omitted information, had it been  
11 included in the affidavit, would have made a material difference as to probable cause. Here,  
12 there was significant evidence included in the warrant beyond this controlled buy operation  
13 supporting probable cause. Specifically, the affidavit cited to two instances in which third  
14 parties indicated defendant supplied drugs. This order finds and holds that the affidavit — with  
15 or without the omitted information — would have amply established probable cause. There was  
16 no material omission.

### 17 3. STALENESS.


18 There mere passage of time is not controlling in a question of staleness. *United States v.*  
19 *Dozier*, 844 F.2d 701, 707 (9th Cir.1988). Rather, courts must analyze staleness "in light of the  
20 particular facts of the case and the nature of the criminal activity and property sought." *United*  
21 *States v. Greany*, 929 F.2d 523, 525 (9th Cir.1991). In cases involving drug trafficking,  
22 probable cause may continue for "several weeks, if not months, of the last reported instance of  
23 the suspect activity." *United States v. Angulo-Lopez*, 791 F.2d 1394, 1399 (9th Cir.1986).

24 Here, 33 days passed between the events of the controlled buy and the search warrant  
25 application. Defendant argues this lapse in time rendered the affidavit information stale. He  
26 cites to *Sgro* in which the Supreme Court held that the passage of 20 days between an alleged  
27 illegal alcohol sale and the issuance of a search warrant rendered the warrant stale. *Sgro v.*  
28 *United States*, 287 U.S. 206, 215 (1932). This argument overstates the holding in *Sgro*

1 inasmuch as the Supreme Court only found the warrant stale because the underlying statute  
2 explicitly required such a warrant to be executed within ten days. *Ibid.* Using the proper  
3 standard under *Angulo-Lopez*, and given the statements from third parties that defendant had  
4 been dealing drugs in May and August of 2018, there is a sufficient basis to believe  
5 methamphetamine was present on the premises during this period. For the reasons stated,  
6 defendant's motion to suppress is **DENIED**.

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8 **IT IS SO ORDERED.**

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10 Dated: November 7, 2019.

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13 WILLIAM ALSUP  
14 UNITED STATES DISTRICT JUDGE  
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